

### Judge Kirsch, cont.

organizations that include the United Way of Central Indiana, the Indianapolis Urban League, the Legal Aid Society of Indianapolis and the Stanley K. Lacey Leadership Foundation.

Judge Kirsch and his wife, Jan, have two children.

### Judge Friedlander, cont.

involved at his alma mater by serving on the Dean's Advisory Board of the College of Arts and Sciences. He also serves on the Board of Directors of the Indiana University Foundation. Judge Friedlander was honored by the IU School of Law as a member of its Academy of Law Alumni Fellows.

Judge Friedlander also remains actively involved in Hamilton County community efforts. He was a member of the local organizing committee for the 1991 PGA Championships, the 2005 Solheim Cup, the 2002 World Basketball Championships; and is a founder of the Carmel Youth Soccer Association.

Judge Friedlander, who was retained on the Court of Appeals by nonpartisan retention election in 1996 and 2006, is married and has two children and four grandchildren.

### Judge Bailey, cont.

Education Award for their commitment to bringing oral arguments into community settings. In February of 2006, he served as the Distinguished Jurist in Residence at Stetson University College of Law; in 2007-08, he was the Moderator of the Indianapolis Bar Association's Bar Leader Series; in 2009, he was designated an ASTAR Science and Technology Fellow and is a past Board Member of the Indiana Judges Association. Currently, Judge Bailey is a member of the Supreme Court Committee on Rules of Practice and Procedure and is Chair of the Indiana State Bar Association's Appellate Practice Section. Also, he is in his second term as a Board Member of the Indiana University McKinney School of Law Alumni Association. Additionally, Judge Bailey serves as an adjunct professor at the University of Indianapolis. Judge Bailey was retained on the Court of Appeals in 2000 and 2010. His wife is a professor; the couple has two post college-age children.

## ATTORNEYS FOR THE PARTIES

### FOR APPELLANT RANDOLPH KELLEY

**Peter Campbell King** graduated from Indiana University-Bloomington in 1976 with a Bachelor of Arts degree in political science and from Tulane University in Louisiana with a Juris Doctor degree in 1979. Also in 1979, Mr. King was admitted to practice law in the State of Indiana; U.S. Supreme Court; U.S. Court of Appeals; U.S. Second, Fifth, Sixth and Seventh Circuit Courts; and U.S. District Court for the Northern and Southern Districts of Indiana.

He joined his father and brother in 1979 in the family law firm, which was established in 1926. From 1984 to 1995, Mr. King served as the City Attorney for the City of Columbus. He is a certified civil mediator and a member of the American Board of Trial Advocates, a national organization dedicated to the preservation of the civil jury trial right provided by the Seventh Amendment to the U.S. Constitution.

Mr. King is a former president of the Columbus Rotary Club, president of the Columbus North High School Bull Dog Alumni Association, and vice-president of the Columbus Indiana Philharmonic.

### FOR APPELLEE STATE OF INDIANA

**Justin F. Roebel** joined the Office of the Indiana Attorney General in June 2012, but previously served as a Deputy Attorney General from 2002-2008. In the interim, Roebel served as Assistant Corporation Counsel to the City of Indianapolis, representing officials in a variety of causes including civil rights, election law, land use, and wrongful death.

Mr. Roebel has represented the State and City in over 600 appeals, including in the Supreme Court of the United States where he authored and co-authored the briefs in *Edwards v. Indiana* and *Armour v. City of Indianapolis*.

Mr. Roebel graduated from Yale University in 1999 with a major in political science and graduated *cum laude* from Indiana University-Robert H. McKinney School of Law in 2002, where he served as Associate Editor on the Indiana Law Review.

Mr. Roebel is admitted to practice in Indiana, the Indiana U.S. District Courts, and the Supreme Court of the United States.

Mr. Roebel is from Fort Wayne and now lives in Indianapolis with his wife and daughter.

### FOR APPELLEE PAIGE DEVLIN

Born in Fort Wayne, **Dennis Geisleman** attended college and law school at Indiana University, graduating from law school in 1982. Since graduation, Mr. Geisleman's focus has been as a trial lawyer, primarily representing persons injured by the negligence of others against insurance companies, corporations, and government entities.

His experience includes more than 100 trials. He has participated in approximately 20 appeals in State Court and before the 7<sup>th</sup> Circuit Court of Appeals.

Personal interests include his family, church, and community efforts, including a 5 year term on the Fort Wayne Housing Authority.

He is senior partner at Geisleman & Brown, LLP.

### *Appeals on Wheels*

The Court of Appeals hears oral arguments across Indiana to enable Hoosiers to learn more about the judiciary's indispensable role in Indiana government.

Since its 2000-2001 centennial, the court has held more than 390 "traveling oral arguments" at high schools, colleges, law schools and other venues.

This will be the court's 17<sup>th</sup> *Appeals on Wheels* event this year.

## COURT OF APPEALS OF INDIANA ORAL ARGUMENT AT A GLANCE SHORTRIDGE MAGNET HIGH SCHOOL

### *Kelley v. State, et al*

#### CRIMINAL LAW ISSUES:

- Whether the trial court properly applied civil settlement proceeds to a criminal restitution order.
- Whether the Appellant has standing to challenge the trial court's restitution order.

#### ORAL ARGUMENT:

Wednesday, May 14, 2014  
1 p.m.

#### APPEAL FROM:

Allen Superior Court  
The Honorable  
Frances C. Gull, Judge

### Synopsis: *Case No. 02A03-1308-CR-329*

In April 2011, Paige Devlin was driving drunk when she rear-ended Randolph Kelley's vehicle. Kelley was seriously injured as a result of the collision. Devlin subsequently pleaded guilty to operating a vehicle while intoxicated and illegal consumption of an alcoholic beverage. As part of her sentence, Devlin was ordered to pay restitution to Kelley in the amount \$59,974.87.

After the entry of the restitution order, Kelley initiated a civil lawsuit against Devlin seeking compensation for his injuries. Eventually, Kelley agreed to settle the civil matter for \$50,000.

After a dispute arose concerning the effect of the settlement on the previously entered restitution order, Devlin filed a motion to enforce the

settlement agreement. The civil court subsequently ordered Kelley to execute a general release of claims providing that he was releasing Devlin "from any and all claims, demands, actions, and causes of action of each and every kind, whatsoever" relating to the car accident.

Kelley executed the release as ordered, and Devlin's insurer paid \$50,000 to Kelley on Devlin's behalf.

Kelley then filed a petition with the criminal court seeking to collect on the unpaid \$59,974.87 restitution order. Devlin filed a response arguing that she was entitled to a credit toward the restitution order in the amount of \$50,000 based on the civil settlement and release.

The criminal court held a hearing on the matter, at which Kelley, Devlin, and the State all appeared.

The State agreed that the \$50,000 civil settlement should be credited toward the restitution order, and the trial court entered an order to that effect.

On appeal, Kelley argues that the criminal court abused its discretion in awarding Devlin a credit toward the restitution order based on the civil settlement and release. Kelley argues that the settlement proceeds were intended to cover non-medical expenses, such as pain and suffering, which were not covered by the restitution order.

Kelley also argues that under Indiana law, a restitution order does not prevent a victim from pursuing a civil action for damages, and a criminal defendant is not entitled to a

- continued on p. 2

Synopsis, cont.

credit toward a restitution order for amounts paid as part of a civil action. Kelley also argues that it is against public policy to allow a defendant to use insurance proceeds to pay a portion of a criminal restitution order. Devlin argues that Kelley lacks standing to challenge the criminal court’s decisions concerning restitution because restitution is a component of a criminal sentence, and the defendant and the State are the only parties with standing in a criminal matter.

JUDICIAL ROBES: A STUDY IN TRADITION

Presidents and governors wear business attire in their official capacities, as do members of Congress and state legislatures. But judges don robes, mainly black, which is a centuries-old tradition with obscure roots. There are variations. Judges on the Maryland Court of Appeals, which is that state’s highest court, wear red robes. Former United States Chief Justice William Rehnquist added gold stripes to his sleeves, reportedly after watching a Gilbert & Sullivan opera that featured a similarly costumed character. “I always heard that the reason we wear robes, and in England wigs as well, is because we represent uniform justice and not our own individual proclivities,” says Judge Margret G. Robb, of the Court of Appeals of Indiana. Judge Robb’s observation applies to some nonjudicial bodies, too. Symphony musicians dress alike, as do soldiers and graduates. In those ensembles, the individual is less important than the group, although standouts are recognized in other ways. According to a 2011 article in *The Justice System Journal*, some scholars regard robes as “legitimizing symbols” that reinforce preexisting positive opinions about the courts. Other examples include the general solemnity of judicial proceedings and the importance placed on legal precedent. A similar viewpoint was expressed in a 2010 Washington Post article that likened robes to “a visual prom-

Devlin further argues that the decision to credit the \$50,000 civil judgment toward the restitution order was within the criminal court’s discretion. **Glossary:** *Et al:* an abbreviated Latin phrase that means “and others.” *Restitution:* compensation for losses paid by a criminal to a victim, not awarded in a civil trial for tort, but ordered as part of a criminal sentence or as a condition of probation.



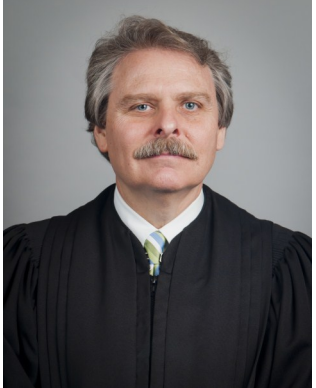
ise.” “The robes acknowledge that the (judges) have shed distractions in favor of objectivity, fairness and a common, high-minded purpose,” according to the author. The relative uniformity of judges’ garb is based almost entirely on tradition, not laws or court rules. There are exceptions, including a 2010 Wisconsin law requiring municipal judges to wear black robes. Indiana has no such laws, but tradition runs strong. All of Indiana’s current Supreme Court and Court of Appeals judges, both women and men, wear undorned black robes, although some of the women sometimes wear colored blouses that add a discreet flair to their attire. (Judge Robb sometimes wears pearls; an understated accent to be sure.) Court of Appeals Senior Judge Betty Barteau says she always wore a white judicial collar when she was a full time member of the court, as attested by photos from the time. But as a trial court judge, she occasionally wore navy or dark green robes. For the record, robes are reserved for court and ceremonial events. Around the office, judges dress like the rest of us.



THE COURT’S HISTORY: NOTABLE NAMES AND NOTES

- Six of the court’s first 19 judges served in the Civil War, all as Union soldiers or officers. Judge Posey Kime, born 1896, was the first to serve in WW1.
- Nine Court of Appeals judges have later served the Indiana Supreme Court, including current Justice Robert D. Rucker.
- Judge Frank M. Powers served just 33 days. The longest serving judge by far is Patrick D. Sullivan Jr., at more than 16,000 days. He retired in 2007 but still serves as a senior judge.
- One of the five original members of the court, Jephtha New, died from a self-inflicted pistol shot in 1892. His term of office was completed by his son, Willard New.
- Another father-son pair also served on the court: Ralph N. Smith and son Russell W. Smith. An uncle-nephew pair also served: Edgar D. Crumpacker and nephew Harry L. Crumpacker.
- Memorably named judges include Henry Clay Fox, Daniel Webster Comstock, Cassius Clay Hadley and Ira Batman.
- Judge John C. McNutt’s son, Paul McNutt, was Indiana governor from 1933-37 and appointed two judges to the Court of Appeals.
- One foreign-born judge attained the court: George L. Reinhard was born in Bavaria in 1843, served in the Civil War and wrote “The Common Sense Lawyer.”
- Judge Thomas Faulconer made Indiana history when, as a Marion County judge, he opened his courtroom doors to TV and newspaper cameras for a celebrated murder trial in 1959.
- Judge Joseph H. Shea resigned his Appeals Court seat in 1916 to become President Woodrow Wilson’s ambassador to Chile.

Today’s Panel of Judges

<p><i>The Honorable James S. Kirsch (Marion County)</i></p>  <p><b>James S. Kirsch</b> was appointed to the Court of Appeals in 1994, was retained by election in 1996 and 2006 and served as Chief Judge from 2004-2007. He also has served as a state trial court judge and has extensive national and international teaching experience. A native of Indianapolis, Judge Kirsch graduated from Indiana University School of Law-Indianapolis (J.D., cum laude) and Butler University (B.A. with honors). He served as Judge of the Marion Superior Court from 1988 to 1994 and as Presiding Judge of the Court in 1992. From 1974-1988, he practiced law with the firm of Kroger, Gardis &amp; Regas in the areas of commercial and business litigation and served as managing partner of the firm. Since 1990, Judge Kirsch has held an appointment as Visiting Professor of Law and Management at the Krannert Graduate School of Management at Purdue University. He has taught law in 21 countries on four continents and currently holds university-level faculty appointments in Germany, Hungary and the Netherlands. Judge Kirsch is also committed to continuing legal education and has served on the faculty of more than 200 CLE programs. In 1990, the Indianapolis Bar Association presented him with its highest award, the Honorable Paul H. Buchanan Award of Excellence. Judge Kirsch also has deep ties to the Indiana State Bar Foundation, the Indianapolis Bar Association and the Indianapolis Bar Foundation and to community</p>	<p><i>The Honorable Ezra H. Friedlander (Hamilton County)</i></p>  <p><b>Ezra H. Friedlander</b> was appointed to the Court of Appeals by Governor Evan Bayh in January 1993. A native of New Jersey, Judge Friedlander graduated from Indiana University in 1962 with a BA in History and Government. He earned his law degree from Indiana University School of Law in 1965. Judge Friedlander practiced law for 27 years before being appointed to the bench. His practice was primarily in the area of civil law, but he also served as a deputy prosecutor in Lake and Marion counties and as corporate counsel to the Secretary of State. Judge Friedlander is former co-chairman of the Indiana Supreme Court’s Commission on Race and Gender Fairness. He is a member of the Indiana State and American Bar associations; American Judicature Society; and the Indiana Judges Association. He is a graduate of New York University’s Appellate Judges Institute of Judicial Administration. Judge Friedlander is a past member of the Board of Directors of the Indiana State Bar Association and past chair of its Young Lawyers Section. He is also a Fellow of the Indiana State Bar Foundation. He has previously been active in the American Bar Association’s Judicial Division (Standing Committee on Minorities in the Judiciary) as well as many other areas of the bar, including the Indianapolis Bar Association and the Indianapolis Bar Foundation. Judge Friedlander stays actively</p>	<p><i>The Honorable L. Mark Bailey (Decatur County)</i></p>  <p><b>Lloyd Mark Bailey</b> was raised on the family farm in Decatur County. He was educated in Indiana, earning a B.A. from the University of Indianapolis (1978); a J.D. from Indiana University McKinney School of Law (1982); and an M.B.A. from Indiana Wesleyan University (1999). He also completed the graduate program for Indiana Judges. Judge Bailey was appointed to the Indiana Court of Appeals by Governor Frank O’Bannon in 1998, after having served as judge of the Decatur County and Decatur Superior Courts. During his legal career, Judge Bailey has served public interest and professional organizations in various capacities. He was the first Chairperson of the Indiana Pro Bono Commission, having been awarded the Indiana Bar Foundation’s Pro Bono Publico Award and the 2002 Randall Shepard Award for his pro bono contributions. His writings include: “A New Generation for Pro Bono,” “Pro Bono Participation Preserves Justice,” and “An Invitation to Become Part of the Solution,” all published in the <i>Indiana Lawyer</i>. Judge Bailey also chaired the Local Coordinating Council of the Governor’s Task Force for a Drug-Free Indiana and the Judicial Conference Alternative Dispute Resolution Committee. Additionally, he has served on the Judicial Education Committee of the Judicial Conference of Indiana. In 2004, Judge Bailey and his First District colleagues received the Indiana Bar Foundation Law-Related</p>
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